

**DECLARATION OF JAMES R. DICKENS
EXHIBIT A
(PAGES 81-105)**

1 Q. Now, without going back and locating
2 all of them, as I read the various Performance
3 Appraisal forms we have just reviewed, which are
4 exhibits 2, 5, 6, 7, and this is now 8, on about
5 every one of them you were rated as "Meets
6 Expectations." Do you concur?

7 A. Yes, sir.

8 Q. And this one actually is the most
9 positive of any evaluation you have had, that is,
10 it has more "Very Good" checks than any other one.
11 Would you agree?

12 THE WITNESS: Can I explain --

13 MR. CHOATE: Sure.

14 A. Can I explain for you why this is like
15 that?

16 Q. Well, no --

17 A. I agree.

18 Q. Now, apparently you want to explain why
19 you think that happened.

20 A. Yes, sir.

21 Q. Why do you think Mr. San Miguel is
22 actually giving you what appears to be a positive
23 evaluation at this point in time?

24 A. Mr. San Miguel had given me a lot of
25 positive evaluations. Mr. Laney had given me

1 positive and "meets expectations" evaluations.
2 There was a silent law in the Fred Meyer, in there.
3 The law was that when you are overrated -- it is
4 always "Meets Expectations," so that you have more
5 room for improvement. Because if you get "Very
6 Good" or "Over Expectations," there is no more room
7 for improvement, and we do not believe that we can
8 reach a person -- it has always room.

9 But the proof to that, that we are
10 doing a great job, are the raises that we get from
11 our paycheck. And --

12 Q. And what?

13 A. That is why I mean to say, if a person
14 is not doing a good job, then that person will not
15 have a raise.

16 Q. Did you get a raise?

17 A. I get a raise, sir.

18 Q. All right. Now, how would you
19 characterize your relationship with Mr. San Miguel
20 as of the date of this performance review, which
21 appears to be June 12, 2001?

22 A. Good, sir.

23 Q. Had he ever made a comment to you that
24 you were too old to work?

25 A. Sometimes he'd say that, because I did.

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1 Q. I didn't understand the answer. Can
2 you explain that?

3 A. I was doing the work, sir.

4 Q. But my question to you was, did
5 Mr. San Miguel ever say something to you like,
6 "Myrna, you are just too old to be doing this job"?
7 Did he ever say anything like that?

8 A. No, sir. He say thank you --

9 Q. All right.

10 A. -- for doing all the work.

11 Q. So he was appreciative of the effort
12 you put in, wasn't he?

13 A. Yes, sir.

14 Q. And was it about this time that
15 Mr. San Miguel was wrapping up his personal
16 situation regarding his divorce, or do you recall?

17 A. I think, yes.

18 Q. And was it about this time that he also
19 began to have another woman that he was seeing and
20 dating?

21 A. Maybe, yes.

22 Q. Did you ever go out with Mr. San Miguel
23 and his girlfriend, Kaylonna, sometime after this
24 evaluation?

25 A. I do not go out, but they came to our

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1 house.

2 Q. And when was that, 4th of July?

3 A. Yes, sir.

4 Q. All right.

5 MR. DICKENS: Time for a break.

6 2:34 PM

7 (Off record)

8 (Exhibit 9 duly marked)

9 2:59 PM

10 BY MR. DICKENS:

11 Q. Ms. Johnson, with the addition of that
12 last page, we now have a five-page exhibit marked
13 as Exhibit 9, and it has got document stamp numbers
14 at the bottom, 200137 through 141. Is that what
15 you have?

16 A. Yes, sir.

17 Q. For the record, can you identify the
18 documents that comprise Exhibit 9?

19 A. The first page is the request for
20 personal leave of absence.

21 Q. And why did you request a personal
22 leave of absence?

23 A. Because I was going to take my daughter
24 in the Philippines.

25 Q. well, now, earlier I kept talking about

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1 a personal leave of absence. You kept saying a
2 family leave of absence. Looking at page 1 of
3 Exhibit 9, you did ask for a personal leave of
4 absence at that time, did you not?

5 A. I asked for a personal leave of
6 absence.

7 Q. And is the first half of that your
8 handwriting above the dotted line, "Approval
9 guarantees the employee's return"?

10 A. Yes, sir.

11 Q. And who signed it in the middle there?

12 A. That is Fred.

13 Q. Fred Sayre, the store director?

14 A. Yes, sir.

15 Q. And was the leave approved, as you
16 understood it, the personal leave?

17 A. Yes.

18 Q. And at the bottom it says "Human
19 Resources Authorization, leave approved, yes." And
20 then it refers to "You qualify for a FMLA LOA. AS
21 soon as I receive a completed Certification of
22 Healthcare Provider, I'll be able to put you on a
23 FMLA LOA." Do you know whose signature that is?

24 A. No, sir.

25 Q. Do you know what the date is there,

1 first. whatever is left will be applied to my
2 family leave.

3 Q. So what difference does it make whether
4 your leave was approved, from a personal
5 standpoint -- was listed as personal leave or FMLA
6 leave, from a practical standpoint?

7 A. Because if I get a personal leave and a
8 family leave, I will have a paycheck for the whole
9 time I was gone.

10 Q. Where did you get that opinion?

11 A. From him. From -- that is how we
12 understand the family leave. We use first our
13 personal leave, our vacation.

14 Q. Well, didn't you understand that you
15 could use your personal -- I mean your vacation
16 toward your family leave?

17 A. I don't have enough hours for vacation,
18 for personal vacation.

19 Q. Okay. But you can get an unpaid
20 personal leave, and you got, basically, four weeks
21 of personal leave, didn't you?

22 A. Yes.

23 Q. I'm trying to understand, from a
24 practical standpoint, what difference does it make
25 to you whether the leave that was approved from

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1 February 12, 2002, to March 13, 2002, was personal
2 leave or family leave?

3 A. There would be no difference.

4 Q. That's what I understand. So why are
5 we making an issue of whether or not you got family
6 leave or not?

7 A. Because I do not have enough for a
8 personal leave. I don't have enough hours to get a
9 paycheck for personal leave. I have only few,
10 maybe two weeks or something. I don't remember how
11 many hours was that.

12 Q. Are you saying that -- go ahead.

13 A. So that I can have a paycheck when I
14 was gone. What he said is, I will use all my
15 vacation left, and then whatever, for the other two
16 weeks or how many days, that will be my family
17 leave.

18 Q. Are you paid family leave?

19 A. Yes. It is almost like you are sick --
20 you are sick.

21 Q. Did you lose any pay while you were on
22 your personal leave from February 12, 2002, to
23 March 13, 2002?

24 A. I didn't lose any on personal leave.

25 Q. So you were paid for that period of

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1 A. I told him that I will talk to all my
2 employees, and I will make sure that recovery was
3 taken care of to the ways that he wants it.

4 Q. And in his e-mail to you, he refers to,
5 "This morning Fred called me to the men's section
6 to walk the ALE department. I was embarrassed by
7 the conditions in some areas. This is not
8 acceptable any longer."

9 Is Fred, Fred Sayre?

10 A. Yes.

11 Q. And he goes on to talk about,
12 "Expectations are a lot higher now, especially when
13 the lead assistant is closing." Did he explain to
14 you what he meant by that?

15 A. He did not explain it to me. He send
16 me kind of like an e-mail.

17 Q. Another one, or this one?

18 A. It is a long one that has all the
19 little projects that our district manager wants to
20 be done.

21 Q. All right. So was this the first
22 e-mail after you got back that was critical of the
23 recovery?

24 A. Yes.

25 (Exhibit 11 duly marked)

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1 BY MR. DICKENS:

2 Q. Ms. Johnson, could you identify
3 Exhibit 11, please?

4 A. This is what I called the tour.

5 Q. Is this the result of someone walking
6 around the department and making a note of things
7 that need to be done?

8 A. Yes, sir.

9 Q. And that's normally done at the
10 beginning of the shift by the department manager?

11 A. This is done in the morning, yes.

12 Q. Right. At the beginning of the day?

13 A. Yes.

14 Q. And whose handwriting is this?

15 A. Mr. San Miguel.

16 Q. Did you receive a copy of this?

17 A. He showed me this copy.

18 Q. He showed it to you or gave you a copy?

19 A. He showed this to me, because this
20 is -- on that day, this is not part of my job.

21 Q. Whose job is it?

22 A. These are the things that has to be
23 done in the morning.

24 Q. Oh, all right.

25 A. Before -- when the -- from the morning.

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1 whether it is 2-27-02 or 3-27-02?

2 A. I have not seen this, sir, before.

3 Q. Now, as you sit here today,
4 Ms. Johnson, do you know what is meant by a
5 "Completed certification of healthcare provider"?

6 A. I don't understand what it meant, sir.

7 Q. And where did you get this Request for
8 Personal Leave of Absence form?

9 A. From -- this is the one that
10 Mr. San Miguel gave me.

11 Q. All right. Let's look at page 2. That
12 says, "Application for Family Medical Leave of
13 Absence." Where did you get that one?

14 A. From him also. These were all
15 together, sir.

16 Q. Okay. So both pages 1 and page 2, it
17 is your recollection that Mr. San Miguel gave those
18 to you?

19 A. Yes.

20 Q. And, again, it is not your recollection
21 that you got these from Ms. Harmon?

22 A. No.

23 Q. All right. Now, the first part of
24 that, page 2, is that in your handwriting?

25 A. Yes.

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1 Q. Okay. So whoever was on that morning,
2 like Mr. San Miguel and whoever else was filling in
3 in the daytime in the management job, would be
4 doing this?

5 A. If I was scheduled in the morning, sir,
6 Mr. San Miguel will walk and then will hand this to
7 me so that I have this done before I leave at 5:00.

8 Q. Okay. Then who was there at that time
9 that would have gotten a copy of this as part of
10 their responsibility?

11 A. Probably Johnna or whoever was working
12 with him that day.

13 Q. Now, did Mr. San Miguel indicate that
14 any of the "job to be completed" comments on this
15 were your responsibility from the night before?

16 A. Okay. My responsibility, sir, is to
17 grab and finish whatever the person who works
18 before me could not finish this -- did not get
19 finished.

20 Q. My question, though, was, did
21 Mr. San Miguel say to you, "Myrna, all of these
22 things should have been done the night before, so
23 we shouldn't have these problems this morning."

24 Did he say that or words similar
25 thereto?

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1 A. The tour, sir, is different every day.

2 Q. I understand that.

3 A. Yes.

4 Q. Do you understand my question, though?

5 A. Yes.

6 Q. What did Mr. San Miguel say, if
7 anything, to you about your responsibility for some
8 of the items that needed to be done that day which
9 are listed on Exhibit 11, the daily tour report?

10 A. Yes. These are supposed to be done
11 that day, on the 14th. We have to finish it on the
12 14.

13 Q. All right. I'll try this one more
14 time.

15 Exhibit 11 is a daily tour done in
16 the morning by Mr. San Miguel?

17 A. Yes.

18 Q. Do we agree?

19 A. Yes.

20 Q. It lists things that needed to be done
21 that morning as soon as possible, correct?

22 A. Yes, sir. The whole day.

23 Q. Now, you say Mr. San Miguel showed this
24 to you, Exhibit 11?

25 A. He gave -- yes, he showed it to me.

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1 Q. Did he give you a copy?

2 A. The copy was there at the desk.

3 Q. Okay. Did he say to you, "Myrna, there
4 are too many things on this that should have been
5 done last night, and you can't fail to get this
6 work done so that it makes such a busy day for
7 those of us in the morning"? Did he make any
8 comment like that to you?

9 A. Maybe he did. I don't really remember
10 if he say that.

11 Q. That's fine. All right.

12 (Exhibit 12 duly marked)

13 BY MR. DICKENS:

14 Q. Ms. Johnson, do you recognize
15 Exhibit 12?

16 A. Yes, sir.

17 Q. What is it, for the record?

18 A. It is an Office Vision from
19 Mr. San Miguel.

20 Q. So initially it starts off with your OV
21 to Mr. San Miguel about the plan-o-gram, and then
22 Mr. San Miguel advising you on Wednesday, March 13,
23 2002, that "Minerva or Julita must complete this
24 plan-o-gram tonight. It has been a week. I can't
25 wait any longer. I want it done tonight." Isn't

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1 that what he's telling you?

2 A. Yes.

3 Q. Did he talk to you in person or just
4 send you the OV?

5 A. On the 12th, he talked to me in person.

6 Q. Okay. Then the next morning -- the
7 12th was Tuesday, your first day back, wasn't it?

8 A. Yes. He told that to me.

9 Q. So then the next day he's telling you
10 it didn't get done, so let's get it done; is that
11 right?

12 A. Yes.

13 Q. Is this the one that never got done?

14 A. Excuse me?

15 Q. This is the plan-o-gram that never got
16 done while you were still at Fred Meyer?

17 A. It got done by me.

18 Q. It did?

19 A. Yes, but not to his standard.

20 Q. Oh, okay.

21 (Exhibit 13 duly marked)

22 BY MR. DICKENS:

23 Q. Ms. Johnson, can you identify
24 Exhibit 13, please?

25 A. This is an office vision from

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1 Mr. San Miguel.

2 Q. Okay. This is the one you got on
3 Saturday evening about things to be done by the
4 following day, Sunday, March 17, 2002?

5 A. Yes, sir.

6 Q. Now, is this a typical OV for you
7 coming on at the closing shift, on a day when
8 Mr. San Miguel was off, as to things he wanted to
9 have you do during that day?

10 A. Yes. When he did this Office Vision,
11 sir, he send it to all of us.

12 Q. who is "all of us"?

13 A. The section head, me.

14 Q. Okay. But you are the person who is
15 the highest-ranking management person at that time?

16 A. Yes, sir.

17 Q. what is a pass-down log?

18 A. I don't exactly remember it now.

19 Q. All right.

20 A. Let me think. (Pause).

21 Q. Rather than go over all of these things
22 here, do you have a recollection in general,
23 Ms. Johnson, as to whether there were any items to
24 be completed by Sunday, March 17, 2002, that were
25 not done that are on this OV list to you from

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1 Mr. San Miguel?

2 A. That I sent an e-mail to Steve Nichols.

3 Q. Who is Steve Nichols?

4 A. He was, I think, assistant or manager
5 from a different store.

6 Q. Now, let me make sure I'm clear on
7 this. Is this a regular, common type OV that you
8 would get for this situation -- that you are
9 working Saturday evening, Mr. San Miguel is off on
10 Sunday, and he's listing things to cover on Sunday?

11 A. Yes.

12 Q. All right. So did you see anything
13 wrong with this OV, as far as the request for
14 things to do?

15 A. No.

16 Q. This wasn't harassing?

17 A. No.

18 (Exhibit 14 duly marked)

19 BY MR. DICKENS:

20 Q. Ms. Johnson, for the record, what is
21 Exhibit 14?

22 A. It is an e-mail, sir, or OV from
23 Mr. San Miguel.

24 Q. And what is this one about?

25 A. It is about the Read and Signs,

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1 Intersection Transfers/Return Policy, and Employee
2 Appraisals, Lockout/Tagout -- that was in our
3 training.

4 Q. So what is that asking you to do, as
5 you understood it?

6 A. That OV from him about progress of all
7 of these.

8 Q. Again, just making sure that certain
9 administrative tasks had been done?

10 A. These are done, sir. I did this.

11 Q. Right. But I'm saying, he's asking,
12 "Just tell me these were done," just so he knows?

13 A. Yes.

14 Q. All right. Again, fairly common as far
15 as an everyday responsibility?

16 A. Yes, sir.

17 Q. All right.

18 (Exhibit 15 duly marked)

19 BY MR. DICKENS:

20 Q. Ms. Johnson, what is Exhibit 15?

21 A. It is another e-mail from
22 Mr. San Miguel.

23 Q. So it looks like the third one we have
24 had here on Saturday, March 16th?

25 A. Yes, sir.

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1 Q. His what? SBS?

2 A. Yes.

3 Q. What is that?

4 A. That's for working for the State of
5 Alaska.

6 Q. All right. And has this been
7 satisfied, this judgment?

8 A. No, sir.

9 (Exhibit 21 duly marked)

10 BY MR. DICKENS:

11 Q. Ms. Johnson, taking a look at
12 Exhibit 21, can you identify that, please?

13 A. This is the Alaska State Commission for
14 Human Rights Intake Questionnaire.

15 Q. Did you fill that out in your own
16 handwriting?

17 A. Yes.

18 Q. Under Section 2, it starts off -- it
19 says, "I believe I was discriminated against
20 because of my," and then it says to check a box.
21 You checked "age," did you not?

22 A. I check "age," yes.

23 Q. You checked "parenthood," did you not?

24 A. Yes, I check parenthood.

25 Q. You never checked "race"?

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1 A. No, sir.

2 Q. You don't think race is an issue, do
3 you?

4 A. No.

5 Q. You never checked "sex"?

6 A. No.

7 Q. You don't think sex is an issue, do
8 you?

9 A. I -- I don't think so.

10 Q. Now, you have checked "employment" down
11 below. So I understand that your contention is,
12 that you are contending that your age and
13 parenthood was an issue in your employment. Is
14 that one of your contentions in this lawsuit?

15 A. Yes, sir.

16 Q. Look on page 2 under Paragraph 6. It
17 says -- this is your handwriting, is it not?

18 A. Yes.

19 Q. It says, "I work for Fred Meyer since
20 December 2, 1992. Last February 13 to March 12,
21 2002, I took a leave of absence/vacation to take
22 care of my daughter." Is that what you wrote at
23 the time?

24 A. Yes. I refer the personal leave of
25 absence as vacation.

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1 Q. Didn't you tell her on April 30, 2002,
2 about a month after you left Fred Meyer, that,
3 "When I left the meeting with Mr. Sayre and
4 Mr. San Miguel, I felt I had quit my job"?

5 A. I was so embarrassed to say I was
6 fired, sir. Even now, I -- because --

7 Q. My question is, isn't that what you
8 told Erin Collins on April 30, 2002, "When I left,
9 I felt I had quit my job"?

10 A. If that is what that says, the paperwork
11 says.

12 Q. Well, that's what it does say. I'm
13 asking if you did say that?

14 A. Yes.

15 MR. DICKENS: Would you mark that,
16 please?

17 (Exhibit 22 duly marked)

18 BY MR. DICKENS:

19 Q. Ms. Johnson, can you identify
20 Exhibit 22, please?

21 A. This is -- I typed this to recall what
22 happened from March 12 to March 18.

23 Q. Okay. When did you prepare it?

24 A. After I found out that -- on the 20th.

25 Q. Well, when after the 20th?

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1 remember what -- but it is also doing the same
2 thing.

3 Q. And then the last page is the Foster
4 Grant. That's a fairly small thing?

5 A. Yes.

6 Q. Now, tell me about Foster Grant. One
7 of your allegations is that after your employment
8 with Fred Meyer ended on March 18, 2002, you
9 continued to service the Foster Grant products at
10 the Fred Meyer store?

11 A. Yes.

12 Q. Did an incident ever come up when you
13 were asked to restrict the timing of your visits?

14 A. Yes.

15 Q. Tell me about that.

16 A. I was working at Fred Meyer putting out
17 sunglasses. And Johnna Havard came to me. Jaime
18 was standing at the shoe department watching Johnna
19 Havard and me. And Johnna Havard said, "Jaime sent
20 me to talk to you, that he only wants you to work
21 in here when he's around."

22 Q. And so what's wrong with that?

23 A. That has never been a policy on any
24 vendor job that I do. It will be hard, because the
25 reason why I am fast on this job, sir, is I start

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1 from one store, move -- finish the job as much as I
2 can, move to the other store, do it again. And if
3 I will have to call and ask when is Mr. San Miguel
4 at the store to work in there, it will almost be
5 making just less than minimum wage. It will be
6 kind of very -- it is hard. Because I don't know
7 what time he gets there. And besides, it is not
8 the policy to do that.

9 Q. Let's talk a minute. You are arguing
10 with me. I just asked you what happened. You only
11 earned \$430 at Foster Grant, so what is the big
12 deal?

13 A. Sir, I lost my job at Fred Meyer at the
14 time. So even \$1 or \$2 was important to me.

15 Q. Did you quit servicing Foster Grant?

16 A. I have to.

17 Q. Well, why? You could come in when he's
18 there. He's there six days a week, most of the
19 time during the daytime. So I don't see that you
20 are restricted, are you?

21 A. I wasn't very comfortable, sir.

22 Q. Didn't you have a nephew that worked
23 for you?

24 A. No. It is my nephew works for my
25 husband.

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1 Q. Did you ever have your nephew service
2 the Foster Grant display?

3 A. No, sir.

4 Q. Did you ever have your husband service
5 the Foster Grant display?

6 A. No.

7 Q. Was your husband ever precluded from
8 servicing anything at Fred Meyer?

9 A. No. I was not even precluded to.

10 Q. No. You were just limited on the time
11 frame, correct?

12 A. The what, sir?

13 Q. You were simply limited, as to the
14 hours you could service, during the regular
15 business hours that Mr. San Miguel was there?

16 A. It was hard for me to be standing in
17 there and working a minimum-wage job while my boss
18 is watching -- my former boss was watching me. It
19 was -- it was very, very hard, sir, to -- to think
20 of such failure.

21 Q. All right.

22 (Exhibit 24 duly marked)

23 BY MR. DICKENS:

24 Q. Ms. Johnson, can you identify
25 Exhibit 24 for me, please?

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1 A. From November until March.

2 Q. And I would expect there were no
3 documents to confirm those discussions?

4 A. No, sir.

5 Q. Do you know anyone who has any records
6 that would refer to any emotional distress that you
7 have been suffering for any reason after March 18,
8 2002, to the present day?

9 A. No, sir.

10 Q. All right.

11 (Exhibit 25 duly marked)

12 BY MR. DICKENS:

13 Q. For the record, Ms. Johnson, what is
14 Exhibit 25?

15 A. This is our weekly schedule.

16 Q. For when?

17 A. From March 17 to March 23.

18 Q. As I understand, the abbreviations at
19 Fred Meyer, at the top, it is the apparel weekly
20 work schedule for the week ending March 23, 2002?

21 A. Yes.

22 Q. So this would have been posted the
23 Friday before, which would have been, it looks
24 like, March 14, 2002?

25 A. Yes, I think so.

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1 Q. Okay. As I read this for your
2 schedule, you were set to work 1:30 to 11:30,
3 Sunday, Monday, Tuesday; off Wednesday, Thursday;
4 1:30 to 11:30 on Friday; and then you have 10:00 to
5 8:00 on Saturday, and 7:00 to 5:00 on Sunday.

6 A. Yes, sir.

7 Q. So it looks as of Saturday that you
8 were scheduled back more on a day shift, correct?

9 A. On one day, sir, yes.

10 Q. And then on Sunday, it is the regular
11 early 7:00 a.m. shift, right?

12 A. This one Sunday, sir, is not a final
13 schedule. This is what -- this is a tentative
14 schedule. This one is subject to change.

15 Q. How do you know that?

16 A. That is our policy, because that is
17 only what we thought about. When the manager do
18 the next schedule, the schedule for the following
19 week, that will be the final.

20 Q. All right. But if that holds, it would
21 look, as of the Sunday starting on March 24, you
22 are going to be back on the day shift schedule?

23 A. If he will not change it.

24 Q. All right. And as I read this
25 schedule, you are working that week, under this